

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Creation of a Low)	
Power Radio Service)	MM Docket No. 99-25
)	
)	

To: Office of the Secretary (Electronic Filing)

COMMENTS OF SAGA COMMUNICATIONS, INC.

Saga Communications, Inc. (“Saga”)¹, by its counsel, and pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, electronically files these Comments on the Commission’s Second Order on Reconsideration and Further Notice of Proposed Rulemaking, *Creation of a Low Power Radio Service* (“SORFNPRM”), 70 Fed. Reg. 39217, published July 7, 2005.² The Commission, in *Creation of Low Power Radio Service* (“*Report and Order*”), 15 FCC Rcd 2205 (2000), authorized the low power FM (“LPFM”) service. The SORFNPRM adjusts the rules governing minor changes and technical minor amendments for LPFM stations. In the SORFNPRM, the Commission seeks comment on technical and ownership issues related to LPFM. Saga herein limits its Comments to technical issues raised in the SORFNPRM. In sum, the proposals put forth by the Commission could easily destroy existing commercial FM service,

¹ Saga Communications, Inc. is a broadcasting company, the stock of which is publicly-traded, whose business is devoted to acquiring, developing and operating broadcast properties. The company owns or operates broadcast properties in 26 markets, including 57 FM and 29 AM radio stations, state radio networks, farm radio networks, television stations and low-power television stations and FM translator stations.

² By *Order*, DA 05-2253, released August 3, 2005, the date for filing Comments was extended to August 22, 2005, so these Comments are timely filed.

notwithstanding the Commission's contrary belief. Saga urges the Commission (1) not to treat LPFM applications as having primary status with respect to prior filed FM translator applications; and (2) not to permit an LPFM station to continue to operate when interference is predicted to occur within the 70 dBμ contour of a subsequently-authorized second- or third-adjacent channel full service FM station. The basis of Saga's concerns is set forth herein.

Background

Congress has indicated that one of the purposes in adopting the Communications Act of 1934, as amended (the "Act"), was to regulate interference to the reception of radio.³ From the adoption of the Act in 1934 until the adoption of the *Report and Order* in the year 2000, there were no LPFM stations. There were FM (frequency modulation) and AM (amplitude modulation) that were subdivided into commercial stations and noncommercial educational ("NCE") stations. There was a known engineering environment and the Commission worked hard to preserve, in the public interest, a clear signal for each station, at least within each

³ Title 47 U. S. C. § 301. License for radio communication or transmission of energy.

It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia, to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, **or when interference is caused by such use or operation with the transmission of such energy**, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmissions or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States (except as provided in section 303(t); or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act (emphasis supplied).

station's "protected service contour."⁴ The rules adopted in the *Report and Order*, changed that world. Today, LPFM stations can and do interfere legally within the 1 mV/contour of FM stations. In Saga's opinion, the proposals in the SORFNPRM would further erode the commercial FM service permitting, under certain circumstances, LPFM stations to interfere even within full power FM stations' principal community contours.

The United States has enjoyed a robust independent commercial broadcasting service, which has been an effective tool for communicating not only entertainment, but critical information during emergencies as well as other programs designed to meet the needs and interests of the stations' communities. This has come about, in large part, because listeners could hear a clear signal when they tuned in to their local stations. Now, with the emergence of competing audio content providers like satellite broadcasting and so-called internet "pod-casting," it is vitally important that the Commission continue to protect the signals of traditional commercial radio stations. With threats of terrorism and natural calamities requiring the deployment of the Emergency Alert System, the public interest demands that stations can be received clearly. LPFM stations have just enough power to completely disrupt listening patterns because, for example, listeners in cars will "tune out" when they pass through an interference area. "Tune-outs" directly affect station revenue, which directly affects the ability of commercial broadcasters to remain in business and provide the public service they are required

⁴ See Title 47 C.F. R. §73.215 (a) provides in pertinent part: "Contour protection. Contour protection, for the purpose of this section, means that on the same channel and on the first, second and third adjacent channels, the predicted interfering contours of the proposed station do not overlap the predicted protected contours of other short-spaced assignments, applications and allotments, and the predicted interfering contours of other short-spaced assignments, applications and allotments do not overlap the predicted protected contour of the proposed station.

(1) The protected contours, for the purpose of this section, are defined as follows. For all Class B and B1 stations on Channels 221 through 300 inclusive, the F(50,50) field strengths along the protected contours are 0.5 mV (54 dB mu) and 0.7 mV (57 dB mu), respectively. For all other stations, the F(50,50) field strength along the protected contour is 1.0 mV (60 dB mu)."

to do. The Commission should not go ahead with its plan to change its interference protection rules.

The *Report and Order* directed the Mass Media Bureau to announce by public notice the opening of national filing windows for LP100 applications. As a result of rule revisions adopted pursuant to the 2001 D.C. Appropriations Act,⁵ facilities proposed in a number of otherwise technically sufficient applications filed in the first two LPFM filing windows became short-spaced to existing full-power FM and/or FM translator stations. Those applications were subsequently dismissed. The 2001 D.C. Appropriations Act also instructed the Commission to conduct an experimental program to evaluate whether LPFM stations would interfere with existing FM stations if the LPFM stations were not subject to the additional channel spacing requirements, and to submit a report to Congress, including the Commission's recommendations to Congress regarding reduction or elimination of the minimum separations for third-adjacent channels.⁶

The Commission stated that as of the date of release of the SORFNPRM, more than 1,175 LPFM construction permits have been granted. Of these 1,175 permits, approximately 590 stations are on the air, in mostly mid-sized and smaller markets. The Commission noted that its actions in the SORFNPRM are designed to "increase the number of LPFM stations on the air and strengthen the viability of those stations that are already operating."

⁵ The Making Appropriations for the Government of the District of Columbia for FY 2001 Act ("2001 D.C. Appropriations Act") (Pub. L. No. 106-553, § 632, 114 Stat. 2762, 2762-A-111 (2000)).

⁶ The Commission selected an independent third party, the Mitre Corporation ("Mitre"), to conduct the field tests. Mitre submitted a report to the Commission, on which the Commission sought public comment. On February 19, 2004, the Commission staff submitted the required report to Congress and, based on the Mitre study, recommended that Congress "modify the statute to eliminate the third-adjacent channel distant separation requirements for LPFM stations." Report to Congress on the Low Power FM Interference Testing Program, Pub. L. No. 10-553 (rel. Feb. 19, 2004).

Saga Urges the Commission Not to Change the LPFM Technical Rules as Proposed

Saga has no comment on whether the proposals concerning transferability, ownership, eligibility, time sharing, license period and relaxation of the transmitter site relocation restrictions are meritorious. However, the other technical changes proposed will result in serious damage to, if not the destruction of, the commercial FM broadcast band. These observations are well-supported by anecdotal evidence, as set forth herein.

One of Saga's subsidiaries, Saga Communications of Tuckessee, LLC, licensee of WEGI(FM), Oak Grove, Kentucky, was faced with serious interference from an LPFM station operating on a first adjacent channel within WEGI's city grade contour. WEGI received complaints⁷ from listeners who were having difficulty listening to WEGI. Saga's subsidiary had filed a complaint with the Commission on June 6, 2005. Saga and the permittee of the LPFM station entered into an agreement whereby, in return for reimbursement of some of its expenses, the LPFM station would apply to modify its operating channel to a channel that would permit the LPFM station to no longer interfere with WEGI. The LPFM licensee was cooperative, and this serious situation was resolved favorably to both parties. Absent a settlement, it is probable that the interference would be continuing.

The Commission has stated that the interference protections the Commission adopted in its Reconsideration Order "place LPFM stations and FM translators on essentially equal footing" with respect to protecting each other from interference. The Commission noted, however, that Commission policy treats translators as a secondary service, and that a "proper role of FM translators among aural services to the public is to provide secondary service to

⁷ See Attachment 1, Copy of Petition for Reconsideration and Request to Revoke Construction Permit and Interference Complaint and Joint Request for Approval of Settlement Agreement.

areas in which direct reception of signals from FM broadcast stations is unsatisfactory due to distance or intervening terrain obstructions.”

LPFM advocates have requested that the Commission reassess the relationship between FM translators and LPFM stations for licensing purposes. In particular, Prometheus Radio Project (“Prometheus”), an activist organization that proudly trumpets its “Pirate Past” on its website,⁸ argued that the Commission’s March 2003 filing window for translator applications opened in major cities before a full LPFM filing window opened, thereby eliminating virtually all opportunities for new LPFM stations in top-25 markets. Prometheus also claimed that translator applications are being filed not by members of local communities, but by non-local organizations applying for large numbers of translator licenses. Prometheus thus requested that the Commission give locally controlled and operated LPFM stations priority over translators.

The SORFNPRM notes that the Commission agreed to reevaluate the current co-equal status of LPFM and FM translator stations as a result of the extraordinary volume of FM translator construction permit applications—more than 13,000—filed with the Commission during the March 2003 filing window. The SORFNPRM reports that the Media Bureau’s Audio Division already has granted approximately 3,300 new station construction permit applications from the singleton filings, and that approximately 8,000 applications remain on file. New LPFM station applications must protect each of these authorized facilities and pending applications. The Commission believes that these filings have had a significant preclusive impact on future LPFM licensing opportunities based solely on application volume, and its proposal is to dismiss all FM translator applications that are mutually-exclusive with others and give LPFM applicants priority in an upcoming window.

⁸ See Attachment 2, pages from <http://www.prometheusradio.org/pirate.shtml>.

The Commission's change in processing policies for FM translator applications resulted in the deluge of applications. The Commission should not penalize FM translator applicants because the Commission did not foresee what many in the industry knew would happen when the FM Translator window was opened. Previous to its adoption of the "window" filing system, a broadcaster who desired an FM translator to fill in service of its full power FM station filed an application; the Commission listed that application on a Public Notice inviting competing applications. Only rarely were competing applications filed, when they were, they appeared on a second public notice and the Commission selected among the mutually exclusive applicants. Broadcasters asked for translator channels only when they needed them. However, when the "window" filing system was inaugurated, broadcasters knew, if they ever wanted an FM translator in their listening area, they had better file for it during the window or risk being precluded by a competitor. The predictable result: 13,000 applications. Having created an intolerable situation, the Commission now proposes to flush 8,000 of those applications⁹ down the drain simply because (1) the applicants weren't lucky enough to file a singleton application and (2) because of demand by a service that will ultimately destroy FM broadcasting.

As the Commission correctly stated in the *Reconsideration Order*, "translator-based delivery of broadcast programming is an important objective," but its proposal reflects the contrary. Some FM translators provide important aural services to unserved and underserved areas and the expansion of this service could be curtailed or precluded by the Commission's proposed actions in this Docket.

Saga submits that the Commission should not treat LPFM applications as having

⁹ Saga's subsidiaries garnered some FM Translator construction permits as a result of singleton conditions. Others applications remain among the mutually-exclusive group. Each application represents a significant investment in technical and legal expenses.

“primary” status to prior-filed FM translator applications and authorized FM translator stations. LPFM stations should continue to be treated like FM translators; i.e., a secondary service. There is no set of facts, pledges to originate local programming included, that warrant a change of this magnitude. LPFM licensees, like full power licensees, are not required to maintain program logs to document what they broadcast. As a result, the Commission has no way to police whether these thousands of LPFM stations would broadcast “local” programming or something else.

Already, LPFM licenses are being abused. On May 12, 2004, another Saga subsidiary, Saga Communications of Arkansas, LLC, licensee of KDEZ(FM), Jonesboro, Arkansas, filed an Informal Objection and Request To Revoke Construction Permit¹⁰ of an LPFM station in Jonesboro. Saga alleged that the LPFM station was broadcasting commercial announcements in violation of Section 399B of the Communications Act.¹¹ The LPFM station responded by denying that it was in violation but admitting that arguably it had done so in one instance and pledging to review its policies and not to repeat the violation. The matter has not been resolved, and KFLO-LP believes its conduct is within the Commission’s policies. The point is that this is an example of an LPFM broadcaster which, in the guise of an NCE station, is competing directly with a commercial station for the local advertising dollar, a situation that can be expected to expand if the Commission makes the proposed rule changes. The KDEZ-FM matter is not an isolated instance. Saga believes, in some cases, violation of Section 399B is premeditated; but in others it is a result of ignorance. It appears that the Commission bends over backward to assist LPFM operators. As a result, they do not appear to be held to the same stringent requirements as full power licensees. They are sometimes merely admonished for

¹⁰ Attachment 3 is a copy of the Informal Objection and Request to Revoke Construction Permit.

¹¹ Title 47 USC § 399B.

broadcasting commercials.¹² Giving LPFM stations primary status and increasing the number of LPFM stations will only exacerbate the situation. The already strained resources of the Commission would not be able to effectively enforce Section 399B of the Act, and complaints from affected broadcasters would most likely take months or years to resolve. The best way to avoid this avoidable situation is to leave LPFM stations in the same legal status in which they now find themselves. The Commission should make no changes in the rules now in effect regarding the status of FM translators and LPFM stations. The Commission should not dismiss the pending mutually-exclusive applications for new FM translator stations and make potential refilings subject to the resolution of the licensing issues raised in this proceeding.

The Commission should not adopt its proposal to limit the Section 73.809 interference procedures to situations involving co- and first-adjacent channel predicted interference. Saga believes that there are no circumstances where the public interest would favor continued LPFM second- and third-adjacent channel operations over a subsequently authorized upgrade or new full service station. Full service stations should be protected just as they are now protected by the rules.

It is especially important that the Commission not amend Section 73.809 to permit an LPFM station to continue to operate even when interference is predicted to occur within the 70 dBu contour of an “encroaching” second- or third-adjacent channel full service station. Such an


¹² Broadcasting commercial matter on an LPFM station is barred by Title 47 C. F. R. §399B. However, the zone between permissible and impermissible advertising on NCE stations has been blurred so as to be indistinguishable. See *Technology Information Foundation, Ltd.; Licensee of Low Power Noncommercial Educational Station WLFK-LP, Eau Claire, Wisconsin*, 19 FCC Rcd 22191 (2004); and the Consent Order in *Brevard Youth Education Broadcasting Corporation; Licensee of Noncommercial Educational FM Station WCEE-LP, Melbourne, Florida*, 20 FCC Rcd 3944 (2005)

amendment is barred by Section 632(a) of the 2001 D. C. Appropriations Act.¹³ An LPFM station should not be permitted to remain on the air if the area of predicted interference affects a full service new station or facilities modification of an existing station. To do otherwise will destroy listeners' existing service, a goal the Commission has historically tried to preserve. The LPFM station should not be permitted to remain on the air if the full service station's community of license would not be subject to predicted interference. An amendment to Section 73.809 as proposed in the SORCFNPRM would not be consistent with Congress's directive barring the reduction of third-adjacent channel distance separations for "low-power FM radio stations."

WHEREFORE, Saga respectfully urges the Commission to act in a manner that will preserve the existing commercial FM radio structure, and not adopt the proposed technical changes in the rules.

Respectfully submitted,

SAGA COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Smithwick", written over the company name.

By: Gary S. Smithwick
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW
Suite 301
Washington, DC 20016
202-363-4560

August 22, 2005

¹³ "(2) The Federal Communications Commission may not--
(A) eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A)."

ATTACHMENT 1

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
PILGRIM'S JOURNEY, INC.) File No. BLL-20040518AAW
) File No. BNPL-20010615AXM
Permittee of Low Power FM Station) Facility No. 135616
WPJI-LP, Hopkinsville, KY)
For License to Cover Construction Permit)

RECEIVED

To: Office of the Secretary
Attention:
Chief, Media Bureau (Audio Division)

JUN - 6 2005

Federal Communications Commission
Office of Secretary

PETITION FOR RECONSIDERATION
AND
REQUEST TO REVOKE CONSTRUCTION PERMIT
AND
INTERFERENCE COMPLAINT

Saga Communications of Tuckessee, LLC ("Saga"), by its counsel, and pursuant to Title 47 C. F. R. § 1.106, hereby respectfully files its petition for reconsideration of the grant of the above captioned application (BLL-20040518AAW) for license for WPJI-LP, Hopkinsville, KY. The license must be rescinded because WPJI-LP is interfering with the operations of WEGI(FM)¹, Oak Grove, KY, in violation of the FCC's rules. In light of this, the underlying construction permit (BNPL-20010615AXM) must be revoked.

Under Section 1.106(b)(1) of the Rules, Saga shows that it was not possible for it to participate in the earlier stages of this proceeding because there was no certainty that

¹ Saga has standing to file this petition since it shares the same radio market with PJI. Saga is licensee, *inter alia*, of WEGI(FM). Moreover, this petition is timely filed by June 6, 2005, since public notice of the grant of the license application was given May 5, 2005 (Report No. 45978) and this petition is filed within 30 days of the date of public notice, and defined in the Commission's rules.

the operation of WPJI-LP would create intolerable interference to the operations of WEGI. Saga's vice president, Susan Quesenberry, states² that although WPJI-LP has been operating sporadically for about a year, it has only become a serious source of interference to WEGI within the last 90 days. Ms. Quesenberry says the station was off the air for long periods of time during the last year and that made it difficult to make a determination that WPJI-LP was interfering with WEGI.

However, interference has now been established, as set forth herein, and it is necessary for Saga to seek reconsideration of the grant of the license and revocation of the construction permit in this manner. Pursuant to Section 1.106(c) of the Rules, the public interest requires consideration of these matters by the Chief, Media Bureau, since listeners to WEGI will be deprived of service if the interference continues unabated. Moreover, this petition relies on facts that were not established until this opportunity to present them.

The WPJI-LP License Must Be Rescinded

WEGI, licensed to Saga, operates on FM Channel 232A (94.3 MHz) at Oak Grove, KY³. The construction permit (copy attached as Attachment 2) for WPJI-LP is held by Pilgrim's Journey, Inc. ("PJI"), and authorizes the construction of a new low power FM station on adjacent FM Channel 233 (94.5 MHz) with 100 watts effective radiated power (ERP) and antenna center of radiation at 21 meters above average terrain.⁴

² See Attached Declaration of Susan Quesenberry, Attachment 1.

³ WEGI's transmitter site is authorized at north latitude 36° 29 ' 43 " ; west longitude 86° 54 ' 26 "

⁴ The transmitter site is authorized at north latitude 36° 50' 48"; west longitude 87 ° 32" min 11". A copy of the license for WPJI-LP is attached as Attachment 3.

Due to the proximity of the transmitter sites and the fact that the stations are separated by only one channel, there is now intolerable interference to the reception of WEGI within its 70 dB μ contour.

To the Declaration of Susan Quesenberry is attached as Exhibit A a statement from Danny Folz, owner of Precision Products, a business located on Askew Service Road which is within the WEGI 70 dB μ contour. Mr. Folz says when he listens to WEGI 94.3, there is "major interference from a church station 94.5." Ms. Quesenberry says the station on 94.5 is WPJI-LP. Exhibit B, attached to Ms. Quesenberry's Declaration, is a map depicting the WEGI 70 dB μ contour and the location of Askew Service Road, which is within that contour.

Pursuant to Section 73.809,⁵ WPJI-LP must correct any interference to the direct reception of WEGI since WEGI operates on the first-adjacent channel to WPJI-LP

⁵ Sec. 73.809 Interference protection to full service FM stations, provides, in pertinent part, as follows:

(a) It shall be the responsibility of the licensee of an LPFM station to correct at its expense any condition of interference to the direct reception of the signal of any subsequently authorized commercial or NCE FM station that operates on the same channel, first-adjacent channel, second-adjacent channel or intermediate frequency (IF) channels as the LPFM station, where interference is predicted to occur and actually occurs within:

- (1) The 3.16 mV/m (70 dBu) contour of such stations;
- (2) The community of license of a commercial FM station; or
- (3) Any area of the community of license of an NCE FM station that is predicted to receive at least a 1 mV/m (60 dBu) signal. Predicted interference shall be calculated in accordance with the ratios set forth in Sec. Sec. 73.215(a)(1) and 73.215(a)(2). Intermediate Frequency (IF) channel interference overlap will be determined based upon overlap of the 91 dBu F(50,50) contours of the FM and LPFM stations. Actual interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the LPFM station.

(b) An LPFM station will be provided an opportunity to demonstrate in connection with the processing of the commercial or NCE FM application that interference as

and there is interference occurring within the 3.16 mVm (70 dBμ) contour of WEGI. A copy of this complaint and petition is being served on PJI and the Commission, attention Audio Services Division. WPJI-LP must suspend operations within twenty-four hours of the receipt of this complaint. WPJI-LP may only resume operations at the direction of the Commission.

Since Saga has shown that interference is occurring within the WEGI 70 dBμ, Saga requests the Commission to immediately order PJI to suspend operations until the interference can be resolved; and if it cannot be satisfactorily resolved, to revoke PJI's license.

described in paragraph (a) of this section is unlikely. If the LPFM station fails to so demonstrate, it will be required to cease operations upon the commencement of program tests by the commercial of NCE FM station.

(c) Complaints of actual interference by an LPFM station subject to paragraphs (a) and (b) of this section must be served on the LPFM licensee and the Federal Communications Commission, attention Audio Services Division. The LPFM station must suspend operations within twenty-four hours of the receipt of such complaint unless the interference has been resolved to the satisfaction of the complainant on the basis of suitable techniques. An LPFM station may only resume operations at the direction of the Federal Communications Commission. If the Commission determines that the complainant has refused to permit the LPFM station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the LPFM station is absolved of further responsibility for the complaint.

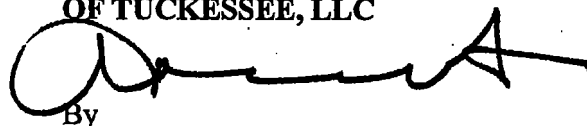
(d) It shall be the responsibility of the licensee of an LPFM station to correct any condition of interference that results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious emissions of the station, operation of the station shall be immediately suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

(e) In each instance where suspension of operation is required, the licensee shall submit a full report to the FCC in Washington, DC, after operation is resumed, containing details of the nature of the interference, the source of the interfering signals, and the remedial steps taken to eliminate the interference.

Based upon the foregoing, PJI's application for license must be rescinded and cancelled. The underlying construction permit must be revoked and the call sign deleted.

Respectfully submitted,

**SAGA COMMUNICATIONS
OF TUCKESSEE, LLC**

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By _____
Gary S. Smithwick
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016
(202) 363-4050

June 6, 2004

Attachment 1

Declaration of Susan Quesenberry

DECLARATION

Susan Quesenberry, under penalty of perjury, declares as follows:

I am a vice president of Saga Communications of Tuckessee, LLC, licensee of WEGI(FM), Oak Grove, Kentucky.

I have spoken with Danny Folz who owns a business called "Precision Products" located at 596 Askew Service Road, near Oak Grove, Kentucky. Mr. Folz provided to me the statement attached hereto as Exhibit 1 stating that when he listens to WEGI, there is major interference from a "church station" on 94.5. The station on 94.5 is WPJI-LP, Hopkinsville, Kentucky.

Attached as Exhibit 2 is a map showing the 70 dB μ contour of WEGI. The location of Mr. Folz's business is marked on the map and is within the 70 dB μ contour of WEGI.

Although WPJI-LP has been operating sporadically for about a year, it has only become a serious source of interference to WEGI within the last 90 days. The station was off the air for long periods of time during the last year and that made it difficult to make a determination that WPJI-LP was interfering with WEGI.

Executed this 6th day of June, 2005.

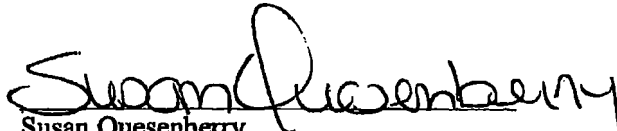

Susan Quesenberry

Exhibit A

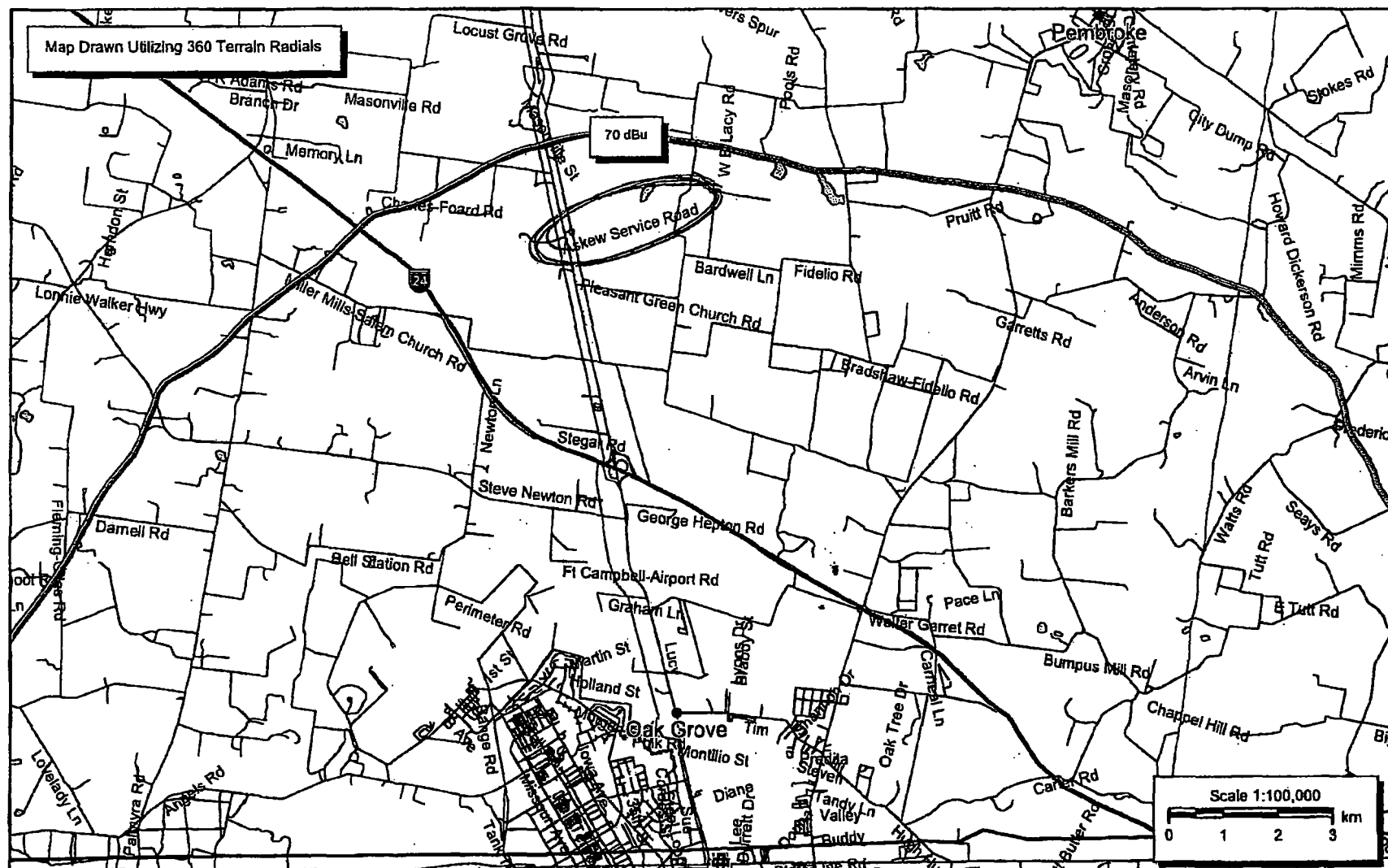
Statement of Danny Folz

My name is Danny Folz
I own a business named Precision Products
located at 596 Askew Service Rd. When
I listen to WEGI 94.3 FM there is major
interference from a Church station 94.5.
It make it very hard to listen to WEGI
because of the Interference.

Danny Folz 881-9008

Exhibit B

Map of WEGI 70 dB μ Contour



**70 dBu Contour Detail
WEGI (FM)**

Channel 232A - 94.3 MHz
6 kW ERP - 78 m HAAT
Oak Grove, Kentucky

Bromo Communications, Inc.
Atlanta, Georgia
May 2005

Attachment 2

WPJI-LP Construction Permit

United States of America
FEDERAL COMMUNICATIONS COMMISSION
LOW POWER FM BROADCAST STATION
CONSTRUCTION PERMIT

Authorizing Official:

Official Mailing Address:

PILGRIMS JOURNEY, INC.
2539 WOODBURN HAY ROAD
HOPKINSVILLE KY 42240

Brian J. Butler
Supervisory Engineer
Audio Division
Media Bureau

Facility ID: 135616

Grant Date: November 18, 2002

Call Sign: WPJI-LP

This permit expires 3:00 a.m.
local time, 18 months after the
grant date specified above.

Permit File Number: BNPL-20010615AXM

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be made only in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules. See Section 73.875.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of Permittee: PILGRIMS JOURNEY, INC.

Station Location: KY-HOPKINSVILLE

Frequency (MHz): 94.5

Channel: 233

Class: LP100

Hours of Operation: Unlimited

Callsign: WPJI-LP

Permit No.: BNPL-20010615AXM

Transmitter: Type Certified. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: As required to operate within authorized range of effective radiated power.

Antenna type: Non-Directional

Antenna Coordinates: North Latitude: 36 deg 50 min 48 sec

West Longitude: 87 deg 32 min 11 sec

Maximum Effective radiated power in the Horizontal Plane (watts): 100

Minimum Effective radiated power in the Horizontal Plane (watts): 50

Height of radiation center above ground (Meters): 29

Height of radiation center above mean sea level (Meters): 191

Height of radiation center above average terrain (Meters): 21

Antenna structure registration number: Not Required

Overall height of antenna structure above ground: 30 Meters

Obstruction marking and lighting specifications for antenna structure:

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

None Required

Special operating conditions or restrictions:

- 1 The permittee/licensee must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

*** END OF AUTHORIZATION ***

Attachment 3

WPJI-LP License

United States of America
FEDERAL COMMUNICATIONS COMMISSION
LOW POWER FM STATION LICENSE

Authorizing Official:

Official Mailing Address:

PILGRIMS JOURNEY, INC.
2539 WOODBURN HAY ROAD
HOPKINSVILLE KY 42240

Penelope A. Dade
Supervisory Analyst
Audio Division
Media Bureau

Facility Id: 135616

Call Sign: WPJI-LP

License File Number: BLL-20040518AAW

Grant Date: May 02, 2005

This license expires 3:00 a.m.
local time, August 01, 2012.

This license covers permit no.: BNPL-20010615AXM

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.

Call sign: WPJI-LP

License No.: BLL-20040518AAW

Name of Licensee: PILGRIMS JOURNEY, INC.

Station Location: KY-HOPKINSVILLE

Frequency (MHz): 94.5

Channel: 233

Class: LP100

Hours of Operation: Unlimited

Transmitter: Type Certified. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: 0.245 kW

Antenna type: Non-Directional

Description: SWR FM1

Antenna Coordinates: North Latitude: 36 deg 50 min 48 sec

West Longitude: 87 deg 32 min 11 sec

Effective radiated power (Watts); 100

Height of radiation center above ground (Meters): 29

Height of radiation center above mean sea level (Meters): 191

Height of radiation center above average terrain (Meters): 21

Antenna structure registration number: Not Required

Overall height of antenna structure above ground: 30 Meters

Obstruction marking and lighting specifications for antenna structure:

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

None Required

Special operating conditions or restrictions:

- 1 The permittee/licensee must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

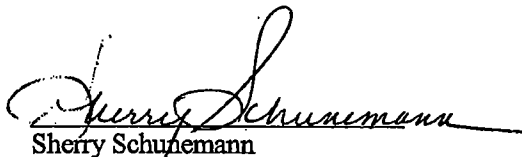
*** END OF AUTHORIZATION ***

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Informal Objection and Request to Revoke Construction Permit and Interference Complaint" was mailed, by First Class U.S. Mail, postage prepaid, this 6th day of June, 2005, to the following:

Mr. James D. Bradshaw
Assistant Chief
Audio Division
Media Bureau
Federal Communications Commission
Washington, DC 20554 (by hand)

Pilgrim's Journey, Inc.
2539 Woodburn Hay Road
Hopkinsville, KY 42240


Sherry Schunemann

WEG 1
442

Before the
Federal Communications Commission
Washington, D.C. 20554

STAMP & RETURN

In the Matter of)
)
PILGRIM'S JOURNEY, INC.)
)
Permittee of Low Power FM Station)
WPJI-LP, Hopkinsville, KY)
For License to Cover Construction Permit)

File No. BLL-20040518AAW
File No. BNPL-20010615AXM
Facility No. 135616

RECEIVED

To: Office of the Secretary
Attention:
Chief, Media Bureau (Audio Division)

JUL 21 2005

Federal Communications Commission
Office of Secretary

**JOINT REQUEST FOR APPROVAL
OF SETTLEMENT AGREEMENT**

Saga Communications of Tuckessee, LLC ("Saga"), and Pilgrim's Journey, Inc., ("PJI") by counsel, hereby submit this Joint Request for Approval of Settlement Agreement concerning Saga's filing of a petition for reconsideration of the grant of the above captioned application (BLL-20040518AAW) for license for WPJI-LP, Hopkinsville, KY, to which PJI responded June 21, 2005. Saga argued that the license must be rescinded because WPJI-LP is interfering with the operations of WEGI(FM), Oak Grove, KY, in violation of the FCC's rules. The parties have now mutually agreed, subject to Commission approval, to resolve the interference issue.

The instant Joint Request transmits a Settlement Agreement to the FCC for approval, which would settle this matter.

Subject to FCC approval, Saga would withdraw its petition for reconsideration upon PJI's filing of an application to modify the construction permit for WPJI-LP to operate on FM Channel 235. This modification would eliminate the interference to

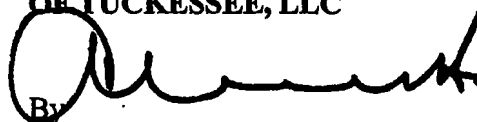
WEGI. In return, Saga would reimburse PJI up to \$2,000 for its legitimate and prudent expenses in opposing Saga's Petition for Reconsideration and in filing and prosecuting the WPJI-LP Modification.

These matters are addressed in the attached Settlement Agreement. The attached agreement contains a statement made under penalty of perjury certifying to the Commission that neither PJI nor its principals, has received or will receive any money or other consideration in excess of legitimate and prudent expenses in connection with the dismissal of Saga's petition for reconsideration. Likewise, the Agreement contains a statement made under penalty of perjury, that Saga certifies to the Commission that neither Saga, nor its principals, has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of PJI.

WHEREFORE, in consideration of the above, it is respectfully requested that the attached (a) Settlement Agreement be approved and (b) the Petition for Reconsideration filed by Saga , BE DISMISSED.

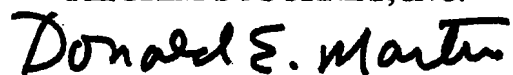
Respectfully submitted,

**SAGA COMMUNICATIONS
OF TUCKESSEE, LLC**


By _____

Gary S. Smithwick
Its Attorney

PILGRIM'S JOURNEY, INC.


By _____

Donald E. Martin, *per GSS*
Its Attorney

Donald E. Martin, P.C.
P. O. Box 8433
Falls Church, VA 22041
703-642-2344

July 21, 2005

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into this ___ day of July, 2005, between Pilgrim's Journey, Inc. ("PJI") and Saga Communications of Tuckessee, LLC ("Saga"):

WHEREAS, WEGI, licensed to Saga, operates on FM Channel 232A (94.3 MHz) at Oak Grove, Kentucky;

WHEREAS, PJI is licensed to operate WPJI-LP on adjacent FM Channel 233 (94.5 MHz) at Hopkinsville, Kentucky;

WHEREAS, Saga alleges that WPJI-LP causes interference to the reception of the WEGI signal within WEGI's 70 dB μ contour, and on the basis of that allegation, has filed a Petition for Reconsideration and Request to Revoke Construction Permit and Interference Complaint dated June 6, 2005 ("Petition for Reconsideration");

WHEREAS, pursuant to 47 C. F. R. §73.809, the permittee or licensee of a Low Power FM station must correct any interference to the direct reception of a full power station within that station's 70 dB μ contour;

WHEREAS, pursuant to 47 C. F. R. §73.870, a modification of the facilities of a Low Power FM station to an adjacent channel is a minor change;

WHEREAS, Saga and PJI desire to enter into this Settlement Agreement in order to resolve the potential interference issues.

NOW THEREFORE, subject to the prior approval of the FCC, in consideration of the foregoing and the mutual covenants and agreements set forth herein, PJI and Saga hereby agree as follows:

1. No later than the close of FCC business on July 25, 2005, PJI and Saga shall file with the FCC a copy of this Agreement together with a Joint Request for Approval of Agreement ("Joint Request") which shall be supported by all documentation required by the FCC's rules.

2. PJI shall file an application with the FCC no later than July 29, 2005 to request a modification of its authorization for WPJI-LP so as to specify operation on FM Channel 235 at its existing transmitter site ("WPJI-LP Modification").

3. The Joint Request shall include a statement from Saga withdrawing its Petition for Reconsideration.

4. On the date on which the order approving the WPJI-LP Modification shall become a "final order"; i.e., no longer subject to administrative or judicial reconsideration or review, Saga shall reimburse PJI for its legitimate and prudent

expenses not exceeding Two Thousand Dollars (\$2,000.00) incurred and to be incurred in opposing the Petition for Reconsideration and in filing and prosecuting the WPJI-LP Modification. Saga agrees (a) it shall cooperate with PJI in connection with the WPJI-LP Modification and shall take no action to delay or prevent the grant of such application. If requested by PJI to do so, Saga agrees to cooperate with PJI in seeking expedited FCC action on the WPJI-LP Modification application. PJI agrees it shall prosecute with diligence and good faith the WPJI-LP Modification. In the event that the FCC denies the WPJI-LP Modification, this Agreement shall terminate and the parties shall no longer be obligated to each other hereunder.

5. As an accommodation to Saga, PJI shall file a request for a Special Temporary Authorization ("STA") for WPJI-LP to remain silent pending approval of the WPJI-LP Modification. Such request shall be submitted to the FCC on the same day that PJI files the WPJI-LP Modification application. PJI agrees to keep WPJI-LP silent unless and/or until the request for the STA or any extension thereof is denied and the WPJI-LP Modification is granted. Notwithstanding the foregoing, PJI shall not be required to keep WPJI-LP silent if the WPJI-LP Modification is denied or if doing so would violate any governmental rule or policy, or would endanger WPJI-LP's authorization.

6. Under penalty of perjury, the person signing below for Saga certifies to the Commission that neither Saga, nor its principals, has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of PJI incurred in opposing the Petition for Reconsideration and in filing and prosecuting the WPJI-LP Modification. Under penalty of perjury, the person signing below for PJI certifies to the Commission that neither PJI, nor its principals, has received or will receive any money or other consideration in excess of legitimate and prudent expenses incurred in opposing the Petition for Reconsideration and in filing and prosecuting the WPJI-LP Modification.

7. By entering into and performing its obligations under this Agreement, PJI neither admits nor denies that the signal of WPJI-LP has caused objectionable interference to the signal of WEGI.

8. Neither this Agreement nor any right created hereunder shall be assignable by Saga or PJI unless the party not seeking to assign consents in writing to such assignment.

9. If any term or provision of this Agreement is determined to be void, unenforceable or contrary to law, the remainder of this Agreement shall continue in full force and effect provided that such continuation would not materially diminish the benefits of this Agreement for either party.

10. This Agreement sets forth the entire understanding of the parties hereto at the time of execution and delivery hereof with respect to the subject matter hereof and may not be amended except by written amendment signed by both parties. All prior agreements between the parties with respect to the subject matter hereof shall be of no

further force or effect. The undersigned each represents and warrants that each has the requisite authority to bind its respective party to the terms and obligations of this Agreement.

11. If either party breaches its obligations under this Agreement, the other party shall each have the right to seek injunctive relief and/or specific performance. The breaching party agrees to waive any defense as to the adequacy of the other party's remedies at law and to interpose no opposition, legal or otherwise, to the propriety of injunctive relief or specific performance as a remedy. In addition, in the event that either party takes legal or equitable action against the other party to enforce any provision of this Agreement, the reasonable expenses of the party substantially prevailing in such legal or equitable action, including its attorneys' fees and other legal costs and expenses, shall be paid by the other party.

12. This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were on the same instrument.

13. This Agreement shall be governed by and construed according to the laws of the State of Kentucky.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

SAGA COMMUNICATIONS
OF TUCKESSEE, LLC

By: 

Edward K. Christian
Its President

PILGRIM'S JOURNEY, INC.

By: _____

Raymond Harold
Its President

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11. If either party breaches its obligations under this Agreement, the other party shall each have the right to seek injunctive relief and/or specific performance. The breaching party agrees to waive any defense as to the adequacy of the other party's remedies at law and to interpose no opposition, legal or otherwise, to the propriety of injunctive relief or specific performance as a remedy. In addition, in the event that either party takes legal or equitable action against the other party to enforce any provision of this Agreement, the reasonable expenses of the party substantially prevailing in such legal or equitable action, including its attorneys' fees and other legal costs and expenses, shall be paid by the other party.

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**SAGA COMMUNICATIONS
OF TUCKESSEE, LLC**

By: _____
Edward K. Christian
Its President

PILGRIM'S JOURNEY, INC.

By: Raymond Harold
Raymond Harold
Its President

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Joint Request for Approval of Settlement Agreement" was hand-delivered this 21st day of July, 2005, to the following:

Mr. James D. Bradshaw
Assistant Chief
Audio Division
Media Bureau
Federal Communications Commission
Washington, DC 20554


Sherry Schunemann

ATTACHMENT 2

prometheus

A few tips on dealing with the powers that be. FCC filing windows • tips on filling out an application, etc...

radio project

Prometheus Home
Sign Up for Our
Mailing List

Volunteer for
Prometheus!

Buy Stuff!

About
Prometheus

Mission Statement

Prometheus
Staff and Past

Staff and Contacts

Board Members
and Funders

Our Pirate Past

Prometheus
Projects

Check out our
projects
and see how we
can
help you.

Help the
Prometheus
Radio Project

Join us!**More Ways to****About Us****Take Action****The FCC****Links****Press Center****Projects****Resources****Contents****Last updated 8.10.05!****Search Prometheus****Go**

About Prometheus

Our Pirate Past

Our pirate days are through. Prometheus Radio Project does not operate any pirate radio stations, nor does it assist in setting up pirate radio stations. These pieces that we wrote years ago are included to show just how simple the technology is for setting up a basic radio station. Besides, it was the pirates and their civil disobedience broadcasts that brought the low-power radio issue to the forefront. The barriers to setting up a radio station have always been legal and political, rather than technical.

Q and A About Pirate Radio

Basic questions and answers about doing pirate micro radio.

So You Want to Start A Pirate Radio Station....

Pete tri Dish's infamous article for those who want to take part in the unlicensed campaign.

Radio Mutiny Reception Tips

Specific to Radio Mutiny, but these tips are universally applicable.

Your Dial Was Made for Revolution

The West Philly Pirate Radio (WPPR) -- also known as Radio Mutiny - mission statement.

Radio Mutiny on Tour!

The Radio Mutiny manifesto upon return from their first tour.

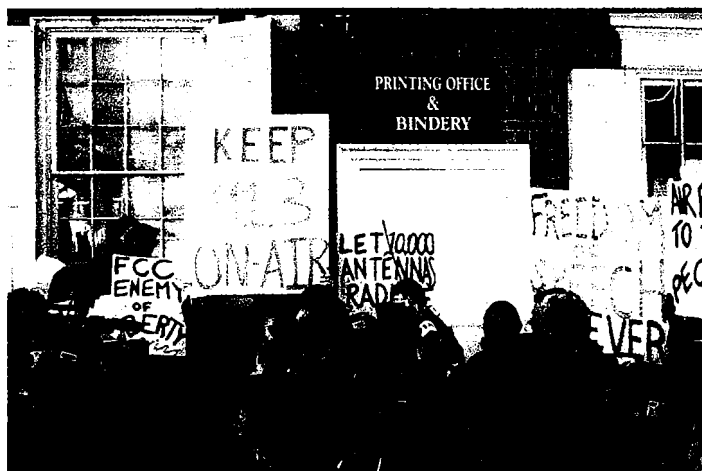
Radio Mutiny

Radio Mutiny Speaks out after one year of operation.

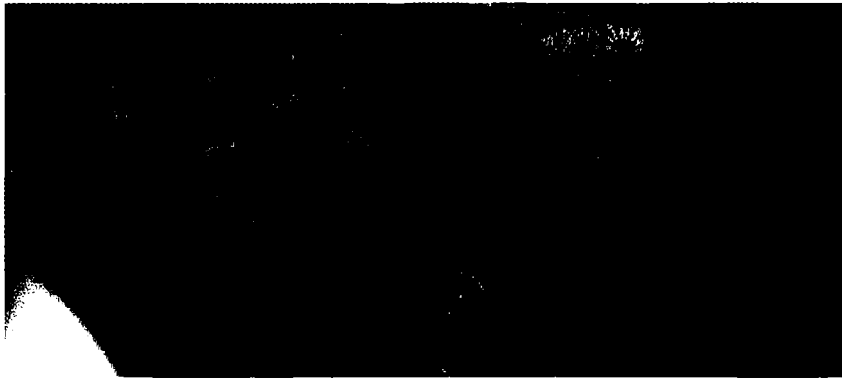
Showdown at the FCC!

Articles, images, and press releases from the October 1998 Showdown at the FCC.

Video and pictures from Pirate showdown at the FCC



Help!



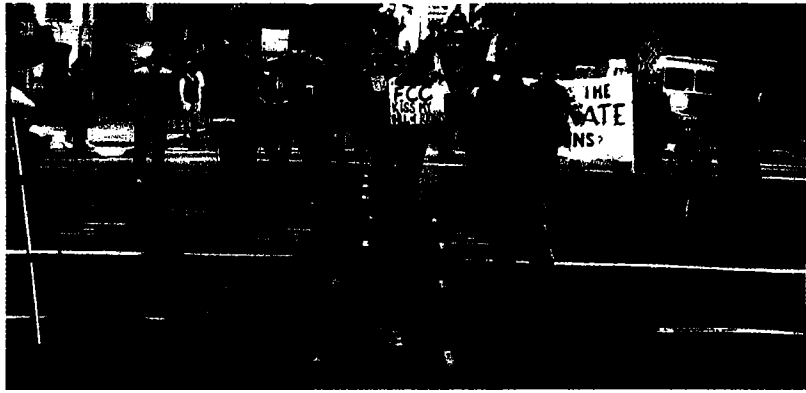
Radio Volta's Studio.



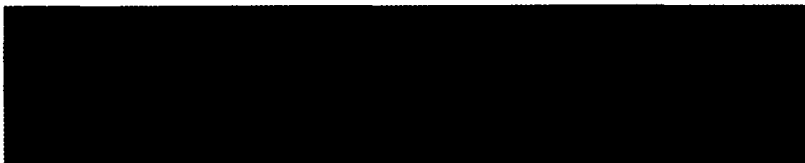
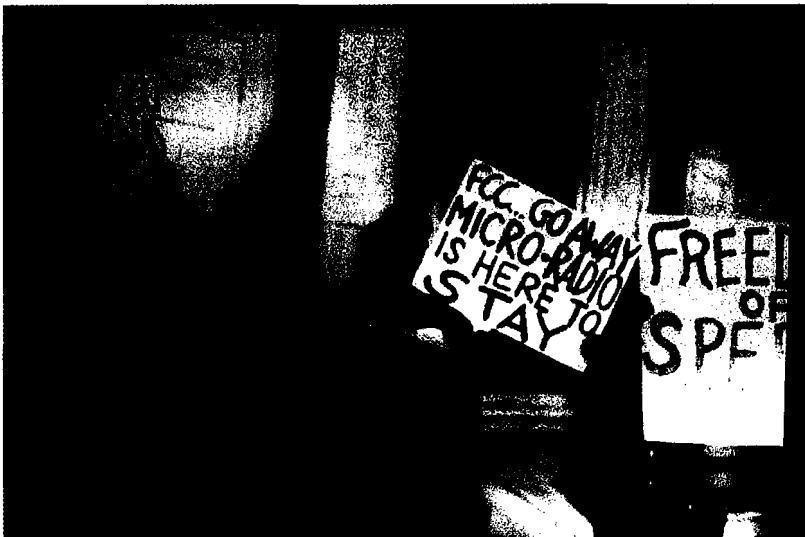
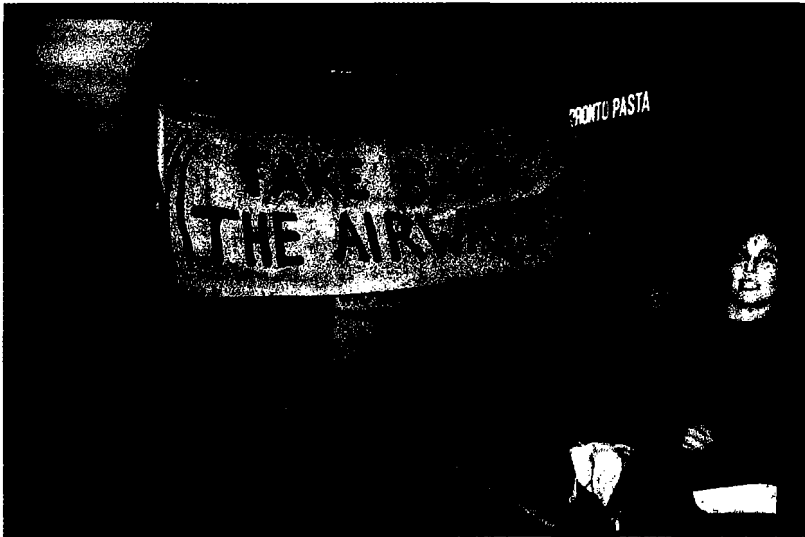
Pete Tridish's lair

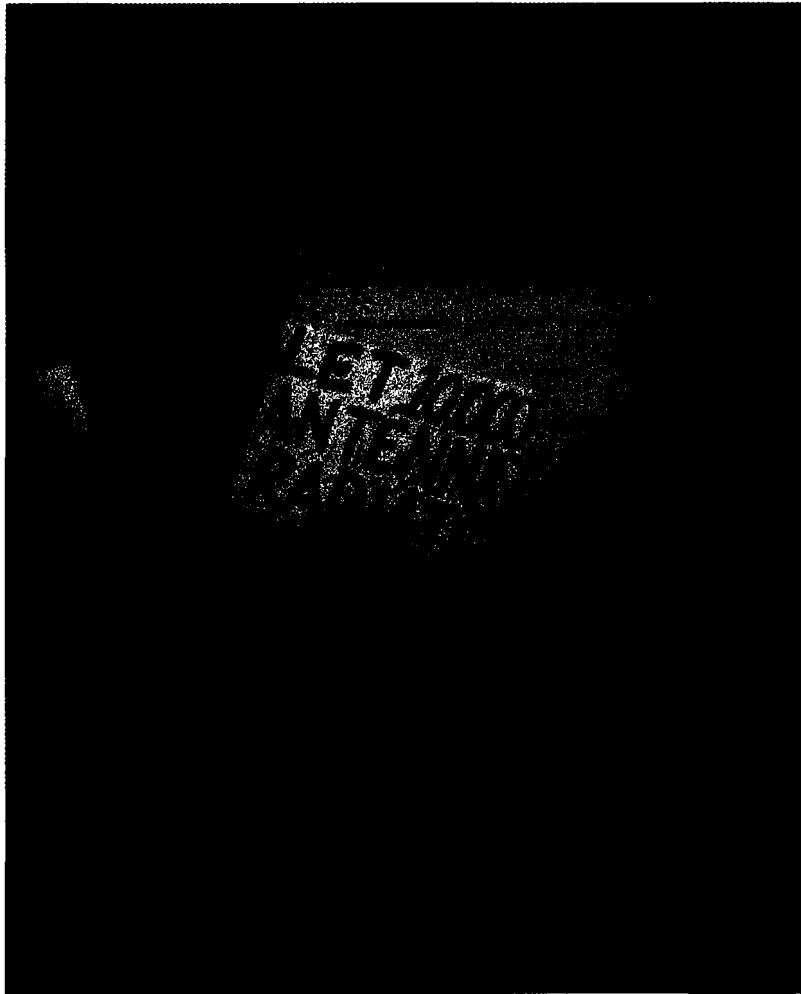




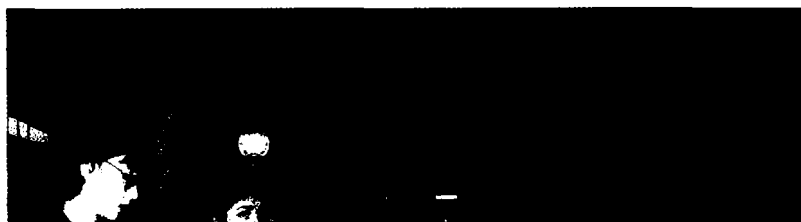
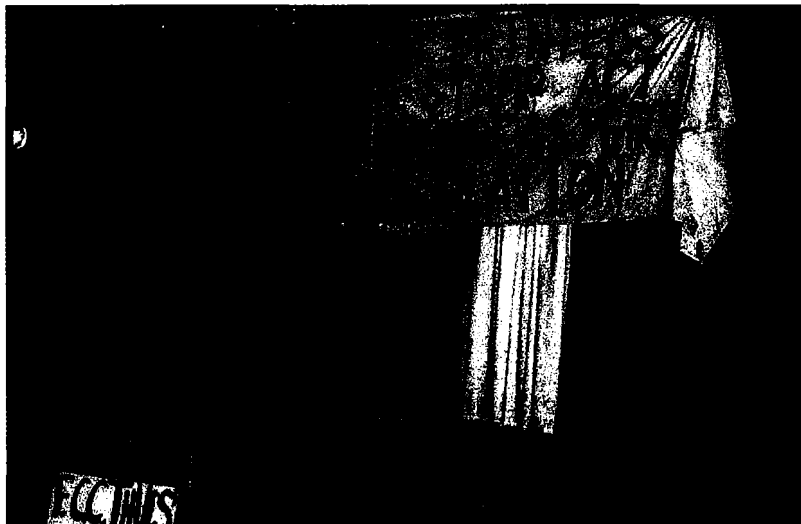
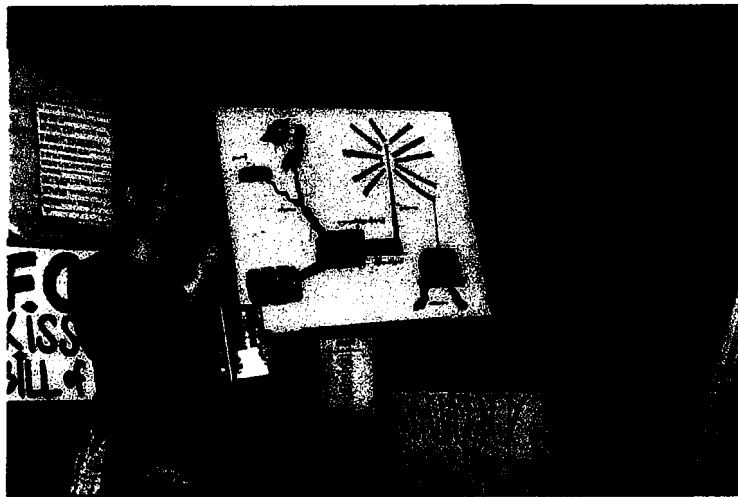














arrrr

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[\[FCC News and Rules\]](#) **[\[Links\]](#)** **[\[Press Center\]](#)** **[\[Prometheus Home\]](#)**
Contact us at:
Prometheus Radio Project
P.O. Box 42158
Philadelphia PA 19101
info@prometheusradio.org
(215)727-9620

ATTACHMENT 3

Before the
Federal Communications Commission
Washington, D.C. 20554

STAMP & RETURN

In the Matter of)	
)	
AMERICAN HERITAGE MEDIA, INC.)	File No. BLL-20040412AAH
)	Facility No. 134653
Permittee of Low Power FM Station)	
KFLO-LP, Jonesboro, AR)	
For License to Cover Construction Permit)	

RECEIVED

To: Chief, Media Bureau

MAY 12 2004

INFORMAL OBJECTION
AND
REQUEST TO REVOKE CONSTRUCTION PERMIT

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Saga Communications of Arkansas, LLC ("Saga")¹, by its counsel, and pursuant to Title 47 C. F. R. § 73.3517, hereby respectfully files its informal objection to the grant of the above captioned application for license for KFLO-LP, Jonesboro, Arkansas. The application for license cannot be granted because KFLO-LP is broadcasting a commercial service in violation of the FCC's rules. In light of this, the construction permit must be revoked.

Background

The construction permit for KFLO-LP is held by American Heritage Media, Inc. ("AHMI"). AHMI represented in response to Question 2 of FCC Form 318, its application for construction permit (BMPL-20030113ABA), that AHMI is a "nonprofit educational organization." Low Power FM ("LPFM") stations may only be authorized to such organizations and must broadcast a noncommercial educational format. In its

¹ Saga has standing to file this pleading since it competes for listeners and revenue with AHMI. Saga is licensee, *inter alia*, of KDEZ(FM), Jonesboro, AR.

application for construction permit, AHM described its educational program and purpose, in part, as follows²:

AMERICAN HERITAGE MEDIA, INC., PROPOSES A PROGRAM SCHEDULE FOR THE ADVANCEMENT OF EDUCATIONAL, CULTURAL, AND CIVIC ACTIVITY, THAT WILL OFFER A WIDE VARIETY OF EDUCATIONAL PROGRAMMING THAT EDUCATES, MOTIVATES AND INFORMS THOSE WHO LISTEN TO THE STATION IN JONESBORO, ARKANSAS. THE STATION PROPOSES TO PROGRAM EDUCATIONAL PROGRAMS TO INFORM ITS LISTENERS ABOUT ISSUES AND PROBLEMS OF THE LOCAL COMMUNITY.

However, monitoring of KFLO-LP reveals that the station is consistently broadcasting gospel music interspersed with commercial announcements in violation of Section 399B of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 399b, and Section 73.503 of the Commission's rules, 47 C.F.R. § 73.503. It is clear that is violating the pertinent statutory and Commission underwriting rule provisions.

**AHMI's License Application Must Be Denied and
its Construction Permit Cancelled**

Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.³ Noncommercial educational stations may not broadcast advertisements, however, contributors of funds to noncommercial stations may receive on-air acknowledgements.⁴ The Commission has held that such acknowledgements may

² In its captioned application for license, AHMI certified that: "apart from changes already reported, no cause or circumstance has arisen since the grant of the underlying construction permit which would result in any statement or representation contained in the construction permit application now being incorrect."

³ 47 U.S.C. §399b(a).

⁴ See Commission Policy Concerning the Noncommercial Nature of Educational

be made for identification purposes only, and should not promote the contributors' products, services, or business. Specifically, such commercial announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease. Attached are transcripts of commercial announcements broadcast on KFLO-LP on April 26 and May 3, 2004.⁵ On April 26, the broadcasts included commercial announcements for Southern Mortgage Company with calls to action describing services provided and telephone numbers; S&T Food Outlet, describing the food available there; C.J. Watkins Construction Company, advertising remodeling work; and a pitch for "The Fresh Air," an "advanced air system that will eliminate smoke and odor." On May 3, 2004, announcements were broadcast, again for C. J. Watkins with a toll free telephone number to call, Keith Clark of Century 21 Indian Realty with his telephone number, Dennis Smith, the "Tire Man of Lepanto" advertising "tires for every need...Auto, Truck and Commercial tires, both new and used." There were ads for Cici's Pizza, trumpeting "all-you-can eat pizza, pasta, salad and dessert with an all day pizza and salad buffet." There were commercials for Mr. Trophy Engraving, "featuring awards for any occasion, plaques, ribbons, trophies, medals, custom engraving, and logo engraving." There was an ad for Area Rug Warehouse, that "has in-stock rugs for home or commercial business. Available in practically all sizes in traditional or contemporary styles." All the ads mentioned the telephone numbers of the businesses.

Broadcasting Stations (1986), Public Notice, *republished*, 7 FCC Rcd 827 (1992) ("*Public Notice*"); Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Memorandum Opinion and Order ("*1982 Policy Statement*"), 90 FCC 2d 895 (1982), *recon. granted in part*, 97 FCC 2d 255 (1984).

⁵ See attached declaration of Casper Stafford III, Saga Vice President, who oversaw the monitoring of KFLO-LP and the preparation of the transcripts.

Examples of announcements that would violate the rules were set out in the *Public Notice, In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, 7 FCC Rcd 827 (1986) [51 Fed. Reg. 12800, published June 16, 1986]:

(A) Announcements containing price information are not permissible. This would include any announcement of interest rate information or other indication of savings or value associated with the product. An example of such an announcement is:

- "7.7% interest rate available now."

(B) Announcements containing a call to action are not permissible. Examples of such announcements are:

- "Stop by our showroom to see a model";

- "Try product X next time you buy oil."

(C) Announcements containing an inducement to buy, sell, rent or lease are not permissible. Examples of such announcements are:

- "Six months' free service";

- "A bonus available this week";

- "Special gift for the first 50 visitors."

The subject underwriting commercial announcements made on behalf of advertisers exceed the bounds of what is permissible under Section 399B of the Act, and the Commission's pertinent rules and policies, under the "good-faith" discretion afforded licensees under *Xavier University*, 5 FCC Rcd 4920 (1990), because they encourage listeners to patronize the for-profit underwriters' services or businesses, or otherwise describe the underwriters in prohibited comparative, qualitative terms, and were made in

exchange for consideration. The commercial announcements offer text-book examples of what may not be broadcast. The Southern Mortgage Company commercial contains an indication of savings or value associated with the product; i.e., "one-hour pre-approval." The S&T Foot Outlet commercial contains a call to action, "...making it worth the drive to Trumann." The C.J. Watkins Construction Company commercial contains an inducement to buy; i.e., "All completed work comes with a full warranty." The Fresh Air commercial contains a call to action; i.e., "Fresh Air independent distributor John Neal would like to offer more information." Addresses and telephone numbers are broadcast in connection with the commercial announcements.

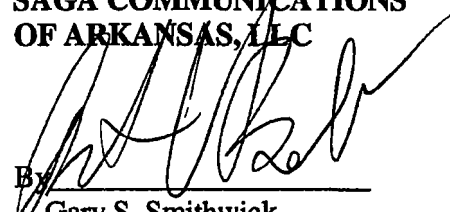
It is very clear that AHMI is operating its LPFM station as a commercial radio station which is prohibited by Section 399B of the Act and the Commission's Rules. Moreover, AHMI based its application for construction permit on its plan to "offer a wide variety of educational programming that educates, motivates and informs those who listen to the station in Jonesboro, Arkansas. The station proposes to program educational programs to inform its listeners about issues and problems of the local community." Saga's monitoring has revealed on KFLO-LP only gospel music and commercials. In light of this, it appears that AHMI has made material misrepresentations in its application for construction permit as to the purpose for which it would use the LPFM station. In past cases involving violation of Section 399B and section 73.503 of the Rules, the Commission has assessed forfeitures up to \$10,000. See *Minority Television Project, Inc. (KMTP-TV)*, 18 FCC Rcd 26611, *application for review pending*; *Window to the World Communications, Inc.*, 15 FCC Rcd 10025 (2000). However, a forfeiture is not warranted here. The Commission should order this station off the air, its equipment dismantled, and an

opportunity should be made available for a legitimate noncommercial broadcaster to use the frequency. This case bears out the concerns legitimate commercial broadcasters like Saga expressed when the Commission was developing the regulatory framework for LPFM stations. Here, a commercial broadcaster, under the guise of operating a noncommercial educational LPFM station, is blatantly and illegally broadcasting commercial announcements in competition with Saga. The Commission should not tolerate this for one more moment.

Based upon the foregoing, AHMI's application for license must be denied or designated for hearing.⁶ Its underlying construction permit must be revoked since it was obtained through misrepresenting the commercial nature of the programs AHMI intended to broadcast.

Respectfully submitted,

**SAGA COMMUNICATIONS
OF ARKANSAS, LLC**


By _____
Gary S. Smithwick
Its Attorney

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016
(202) 363-4050

May 12, 2004

⁶ Saga requests that it be made a party to any future hearing on AHMI's qualifications to be a Commission licensee.

DECLARATION

Casper Stafford III, under penalty of perjury, states as follows:

2 I am a vice president of Saga Communications of Arkansas, LLC, licensee of KDEX(FM), Jonesboro, Arkansas, a station licensed to the same community as KFLO-LP.

On April 26 and May 3, 2004, employees under my direction, tape recorded the broadcasts of KFLO-LP. The tapes were transcribed and the transcriptions attached hereto are a true and correct representation of the commercials broadcast on KFLO-LP.

Executed this 12 day of May, 2004.


Casper Stafford III

KFLO FM LP
Jonesboro, AR
April 26, 2004

“Southern Mortgage Company can help you with refinancing and consolidation of your bills. Southern Mortgage Company offers one-hour pre-approval. Southern Mortgage Company’s number is 802-3375, or toll free at 1-800-493-6671, and their office is located at 2005 E. Highland Drive in Jonesboro. Southern Mortgage Company. Proud to support Southern Gospel Music on 102.9 FM KFLO.”

“S&T is open to the public. And they now accept food vouchers. You’ll be surprised by the quality and the price on meats, such as pork chops, fish, hot wings, and all cuts of chicken. Vegetables and appetizers, like pepper poppers, cheese sticks, mushrooms and corn nuggets, making it worth the drive to Trumann. S&T Food Outlet, inside Couch’s Barbecue, at 405 Highway 463 South in Trumann. Proud to underwrite gospel programming and information on 102.9 FM KFLO.”

“CJ Watkins Construction Company services families throughout Northeast Arkansas and Southeast Missouri with custom windows, doors and siding, enclosures, carports and complete remodeling. All completed work comes with a full warranty. CJ Watkins Construction Company has a toll free number. That number is 1-877-259-2854. CJ Watkins Construction Company.”

“Echoquest introduces The Fresh Air, an advanced air system that will eliminate smoke and odor. The Fresh Air combines natural environmental processes with state-of-the-art technology to create a more efficient way to keep you free of smoke and odor. The Fresh Air can also be used to kill mold, mildew and bacteria. Fresh Air independent distributor John Neal would like to offer more information. John Neal independent distributor for The Fresh Air by Echoquest. The toll free number is 1-888-309-2173. That’s 1-888-309-2173, or 870-258-4173 for a bundle of Fresh Air, by Echoquest.”

KFLO FM LP
Jonesboro, AR
May 3, 2004

Good luck to all the 2004 graduating seniors from C.J. Watkins Construction Company of Osceola. You've struggled, worked hard, studied late and made sacrifices. And now you're graduating. Best wishes and lots of luck in the future from C.J. Watkins Construction Company...specializing in custom windows and siding, enclosures, doors, and remodeling of all kinds. Phone toll free 1-877-259-2854.

Hi, my name is Keith Clark and I am very happy to underwrite Christian music on KFLO LP 102.9 FM. I am a realtor with Century 21 Indian Realty in Jonesboro. We specialize in listing and selling homes, farm lands and commercial businesses. My phone number is 761-Home which is 761-4663. This is Keith Clark and I am pleased to be a benefactor of KFLO music. Thank you.

Your friends at Mobile Custom Cleaning proudly salutes the graduating seniors of 2004. Congratulations on making the grade. We know you'll meet every challenge of the future with success. Best wishes to our area seniors from Mobile Custom Cleaning...specializing in pressure washing of commercial and residential exteriors. Also farm equipment, tractors, trailers and monuments. Phone 870-486-2629. Or 870-930-4823. Mobile Custom Pressure Washing.

Dennis Smith, The Tire Man of Lepanto, is pleased to underwrite the gospel programming on KFLO. The Tire Man, located at 501 Greenwood in Lepanto, features tires for every need. Auto, Truck and Commercial tires, both new and used. Phone 870-475-3080. The Tire Man, Dennis Smith in Lepanto.

At Cici's Pizza, you'll find all-you-can eat pizza, pasta, salad and dessert with an all-day pizza and salad buffet. Whether you dine-in our newly remodeled restaurant in the K-Mart Shopping Center on Caraway Rd, or carry-out, Cici's Pizza, Salads and Pasta is ready to serve you. Catering and group delivery is available by calling 932-8300. You can enjoy Cici's anytime at 2116 S. Caraway Rd. in the K-Mart Shopping Center. Proud to sponsor gospel music in the Jonesboro area. Cici's Pizza. 2116 S. Caraway Rd in the K-Mart Shopping Center. 932-8300.

Mr. Trophy and Engraving, located at 3514 E. Nettleton in Jonesboro wants to congratulate the 2004 senior class. They offer sincere best wishes to all area graduates and wish for them a happy, bright and successful future. Good luck to the senior class of 2004 from Mr. Trophy and Engraving, 3514 E. Nettleton, featuring awards for any occasion, plaques, ribbons, trophies, medals, custom engraving, and logo engraving. Phone 972-6832. Mr. Trophy and Engraving.

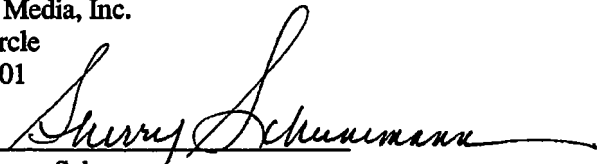
Area Rug Warehouse located four miles South of the bypass on Highway One is glad to help bring you the gospel music on KFLO Radio. Area Rug Warehouse has in-stock rugs for home or commercial business. Available in practically all sizes in traditional or contemporary styles. That's Area Rug Warehouse Highway One South. Four miles South of the bypass. Phone 935-3805. Area Rug Warehouse, located just past Walker's Catfish and Seafood.

Welcome to the very best inspirational music programming. It's here at 102.9 on your FM dial. KFLO is KFLO LP. Broadcasting the best in Southern and Traditional Gospel music. If you're enjoying listening, tell your friends to tune-in. We're here...102.9 FM.

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Informal Objection and Request to Revoke Construction Permit" was mailed, by First Class U.S. Mail, postage prepaid, this 12th day of May, 2004, to the following:

Mr. John J. Shields,
President
American Heritage Media, Inc.
2618 Rosewood Circle
Jonesboro, AR 72401


Sherry Schunemann

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Comments of Saga Communications, Inc." was mailed by First Class U.S. Mail this 22nd day of August, 2005, to the following:

Dan J. Alpert, Esquire
Law Office of Dan J. Alpert
2120 North 21st Road
Arlington, VA 22201

Donald E. Martin, Esquire
Donald E. Martin, P.C.
Post Office Box 8433
Falls Church, VA 22041



Sherry L. Schunemann